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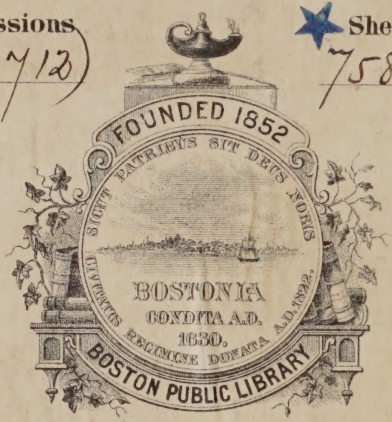

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a statement

EX-POST FACTO LAWS

BY

JUDICIAL LEGISLATION!!

A

STATEMENT OF REASONS

AGAINST THE ASSUMPTION AND EXERCISE OF

EXECUTIVE AND LEGISLATIVE POWERS

BY THE

Supreme Judicial Court:

WITH REMARKS INTENDED TO PROVE THAT THERE IS NO LAW IN THIS STATE, CLOTHED WITH THE AUTHORITY OF THE CONSTITUTION, AGAINST THE SALE OF

SPIRITUOUS LIQUORS;

AND THE IMPOSSIBILITY OF SUPPRESSING THE SALE BY

PENAL LAWS,

WITHOUT TRANSCENDING THE POWERS, AND INVADING THE SACRED RIGHTS OF PROPERTY, WHICH ARE ESTABLISHED AND GUARANTIED BY THE

CONSTITUTION OF MASSACHUSETTS.

Boston:
WILLIAM CHADWICK, PRINTER,
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1849.

EX-POST FACTO LAWS,

BY

JUDICIAL LEGISLATION!!

It has been recently stated, with an air of "fanatical triumph," that, within the last two months the sum of twenty-five hundred dollars has been paid to the officer of the Municipal Court, in the shape of fines "imposed on a FEW individuals" for a violation of the license law, as it is called, when, in point of *fact*, the only "law" which has been violated, as we apprehend, and for which this amount of money has been extorted by the help of unconstitutional judicial power, is the ultra, but *disappointed will* or *desire* of a *few* to "*rule*" and "*dictate*" to *all* others, to do that which *they themselves do not*, nor will the great community practise.

The suggestions and dictates of nature are not written in any book, nor can they be, neither can they be controlled by statutes. How then, can one man, or an association of men, know *when* and *what* our sensations, wants, fears, or affections are? Is it not presumptuousness and folly to lay down a rule in relation to our individual natural wants and desires, and undertake to enforce and make that rule of universal application to every one, in all the various circumstances in which they may be placed? If it could be done, it is obvious to every one, that it must be ONLY by the *consent* of those whose RIGHT it is to decide for themselves, under the suggestions of nature and their own judgment.

The large amount of money, illegally, as we believe, which has been extorted from a "*small*" number of citizens in the short space of fifty or sixty days, gave rise to reflections which resulted in a determination to look into and examine this subject, in order to see whether there *is*, or is *not*, a fearful and dangerous degree of corruption, PARTIALITY and "*professional hypocrisy*" in the procurement of indictments, and in the TRADING or COMPROMISING administration of the "law," if, in fact, there is any law now in force, which can thus extort or justify the extortion of large sums of money from a *very* "*few* individuals," while there are hundreds who openly sell the same articles, but who are never molested or complained of, and consequently, are not brought to feel the iron and despotic power of partizan "judge law," nor made to smart under the unconstitutional and UNJUST EX-POST FACTO LAW brought upon the people by JUDICIAL LEGISLATION.

This state of things has been brought about, as we believe, and as we shall endeavor to show, by the *usurpation of power* by the Supreme Court. It will be conceded on all sides, we presume, that the CONSTITUTION, and NOT the Supreme Court, is the organic *paramount* law of the State.

The decision of the Supreme Court in the case of the Commonwealth *vs.* Churchill, in Norfolk County, is one of the most extraordinary *opinions* or decisions that has been made since the adoption of the Constitution. By the opinion of the court, as published, no other respect appears to have been paid to the Constitution, but to evade and misinterpret its plain language, or to disregard it altogether, in order to base its opinion on "USAGE *and* TRADITION! and the well-known *repositories of legal learning!*" in order to MEET THE VIEWS of a few irresponsible, ultra, and indiscreet leaders.

Look at the opinions of C. J. Marshall and discover, if

you can, the least wavering, or leaning to the right or to the left, always taking for his guide, as the only *authority* which he was bound to respect and obey—the *Constitution* of his country, regarding it as the highest and the *controlling* authority in the formation of all his official opinions. No moral, political, or sectarian association of men, however popular, could influence or deter him from giving the Constitution its full, fair, and honest interpretation, keeping in view, and carrying out the original intentions of its framers. Thus subserving the cause, and upholding the supremacy of *constitutional liberty*. Can the same be said with regard to our Supreme Court, in its decision of the case before cited?

The clearest provisions of our Constitution were disregarded by the court in that case, as we think, under the influence of motives which it is needless to speculate about or to name, and a tissue of reasoning adopted, founded on the dogmas and dictum of ancient jurisprudence, as disreputable to a Massachusetts Judicial Tribunal as it is repugnant to the Constitution, and the common sense of an intelligent and free people.

The present condition of the license question, with its fraudulent and *corrupt administration*, which is acknowledged to be "a disgrace to a free and enlightened people," is justly attributable, as we believe, to the *arbitrary assumption* of power by the Supreme Court. This state of things was brought about by a usurpation of power which is not only dangerous to constitutional liberty but repugnant to the common sense of mankind, and the explicit provisions of our Constitution.

Whenever the Supreme Court shall attempt to tyrannize over the people in a manner NOT AUTHORIZED by the laws and the Constitution of the State, it is manifestly by a power usurped, and resistance to it becomes a plain, imperative duty.

There is a principle in man, after all, which tells him that resistance to "power usurped" is not only a duty which he owes to himself and to his neighbor, to his State and its Constitution, but which he owes to his God in asserting and maintaining the rank which he gave him in his creation.

Where is the authority to be found which gives the Supreme Court the power to REVIVE and clothe with "constitutional authority," a repealed law? In this State the Court did exercise that power, or adhere to that ancient dogma down to 1780, *when* by the adoption of the Constitution, that power was "denied the Court," and that rule of ancient despotism was superseded and abolished, it being "contrary" to the Constitution and the rights and liberty secured to the people by it. How could this be made a government of *laws* and NOT *a government of men*, but by witholding *that power* from the Court, and the abrogation of that dangerous and absurd rule, which inevitably leads to and practically establishes judicial legislation? Notwithstanding this solemn declaration by the people of this Commonwealth, in the organization and distribution of the powers of government, the court have in defiance of the Constitution usurped the power which was originally exercised under the oppressive and dangerous *rule* that, the "repeal" of a statute, by "IMPLICATION" revives a pre-existing but repealed law! thereby *assuming* and *exercising*, in fact, both *executive* and *legislative powers*, which is expressly forbidden by the 30th article of our Bill of Rights. The Supreme Court is expressly *prohibited* from assuming and exercising "*executive or legislative powers, or either of them, to the end that this shall be a government of laws, and not a government of men.*" Who does not see that *judicial legislation*, is in fact, as well as in its origin and tendency, *substantially* a "government of *men.*" The "law" which springs from judicial legislation does not

exist even in the breast of the judge, *before* he lays it down. No man then, can know what the "law" is *before* he commits the act. "Law" is supposed to be a rule, an *unbending text* intended to regulate or control the actions of individuals. The *law* must exist *before* the act is committed, otherwise the punishment will be unjust and illegal. A rule or a "law" which is *unknown*, in fact, which *does not exist*, can *govern no man's conduct*. Hence it will be perceived, that judge-made or judge-revived law never *precedes* but follows, and even in its existence, is SUBSEQUENT to the act to be punished. Who can fail to see that "a government of men," and *judicial legislation* is *one and the same thing?* Under the Constitution no law can be *enacted*, no law can be *repealed*, and no *repealed law can be revived*, but by the concurrent exercise of *executive* and *legislative* powers, each department acting in its appropriate constitutional sphere. This is not only the doctrine but the letter of the Constitution, approved and sustained by the experience and the *common sense* of every man who is capable of reading the Constitution. Now, the "rule of construction" under which, or in obedience to it the Supreme Court, (by *reviving* the law of 1832, or the 2d and 3d sections of the 47th chap. of the R. S., which by the statute of 1838 *was repealed*,) have in open violation of the Constitution, assumed and exercised both *executive* and *legislative* powers. Can a dead law, (a law which the executive and legislative branches of the government, under the clear and full authority of the Constitution, "*annihilated*," in 1838, and the legislature in 1840, by a vote taken by yeas and nays, and by a majority of twenty-nine, *refused* to revive,) we ask *every* man of common sense, of *all parties*, whether that *repealed*, "ANNIHILATED" law, can be revived and *clothed with constitutional authority* by "usurped power," even when that power is exercised by the Supreme Judicial Court of Massachusetts?

Again, the 10th Article of the Bill of Rights declares that the people of this Commonwealth are "*not controlable by any other laws than those to which their constitutional representatives have given their consent.*" Now, will any man, or any court, without a Jeffreys or a Bradshaw for its head, undertake to maintain that a *repealed law*, an *annihilated* law, as the Supreme Court say in the opinion given in the case of Commonwealth *vs.* Churchill, has the "CONSENT" of the representatives to take the life, the liberty, or the property of the citizen? Yet, by the usurpation of executive and legislative powers by the Court, that provision of the Constitution also, is practically nullified, the legislation of the State disregarded, the people deprived of constitutional and *legislative* PROTECTION, and subjected to the arbitrary and unlimited power of a "judicial despotism," similar to that described by Macaulay, when he says that "impudence and ferocity sat upon its brow," while it insulted the common sense and trampled on the most sacred rights of the people. What greater insult can be offered to a "free and enlightened people," than a practical contempt of their Constitution by their public servants?

If the Constitution does not restrain and limit the judiciary within the prescribed limits expressly laid down in its provisions, then it is manifest to every man, that the judicial department, *for a time at least*, (under and in obedience to one of the most oppressive and offensive principles that has ever disgraced and rendered justly obnoxious and hateful the judicial tribunals of other nations,) "MAY" take the people and their rights from the "protection of the laws" made by their immediate representatives, and subject them to the arbitrary and despotic "rule of construction," which was FIRST ADOPTED by the time-serving and king-worshipping judges in the reign of Henry VIII.

The power which can rightfully *create* and *destroy* or "*annihilate*" a statute, is the only power which can *legally* and rightfully re-create or *revive* it. But the judicial dictum or doctrine reverses this obviously correct and established principle. According to the logic or doctrine of the Court, the killing of a living man by one who has a right so to do, ought by that act to bring a dead one to life again, without the intervention of the original AUTHOR of his life and death. To say that the *repeal* of an existing statute *revives* a pre-existing but dead law, is as repugnant to reason and common sense, the genius and theory of our government and the constitution, as the other is repugnant to and *impossible* under the fixed and established laws of nature.

The remarks which we have already made, clearly indicate the ground on which we stand, and the conclusion to which we have come in relation to the license question. Taking the Constitution as it is, looking at the objects originally contemplated by the framers and the people who adopted it, the spirit and genius, as well as its express language, fully and triumphantly sustain the conclusion that there *is not* at the present time, nor has there been since February, 1840, one particle of law in this State, clothed with the "full power and authority of the Constitution," restraining or prohibiting the sale of ardent spirits except on the Sabbath.

This conclusion is not only our own, but that of the Constitution, and it is sustained and fully demonstrated by the sentiment, the spirit and genius, the doctrine and the express provisions, of that organic paramount law of the State.

If this be true, (and we challenge a refutation, or a denial of this conclusion, without an absolute disregard of the Constitution,) where, and from whence is the authority obtained by the Court to "legislate," and make or revive laws, and to arraign and extort money from individuals who have

in fact, violated *no law of the Commonwealth*, that is clothed with the "full power and authority" of the people?

We do not, and the people will not, if they still regard their constitutional security and the protection of their rights as worth preserving, if they are determined to maintain and defend the integrity, and to uphold the SUPREMACY of the Constitution, if they still prefer to live under a "government of LAWS" rather than under a "government of *men*" (tho' they may be judges,) we say that we do not, and we believe the people will not recognize or regard as a law clothed with the "power and authority" of the Constitution, a statute, which has been, and still *is* a dead, a "*repealed*" law by the Legislature, but which, under an ancient, despotic and "repudiated principle," or rule of judicial "construction," has been judicially revived by the usurpation and exercise of "executive and legislative powers" by the Supreme Judicial Court. It may be asked, *when* were that and other kindred principles of "ancient tyranny and judicial despotism," repudiated and condemned as unworthy of being recognised, or any longer tolerated by the free and enlightened people of Massachusetts? The adoption of the Constitution in 1780, was the consummation of "that glorious work" which abrogated and expunged from our Statute Book those principles and rules which no free people could any longer tolerate. A repealed law, thus revived by judicial construction, cannot by any possible interpretation of the Constitution, consistently with the original contemplations of those who framed it, be brought within and clothed with its power, or sanctioned by its authority. Wherein is the difference between a "law revived by the Court," after the act shall have been committed, and an ex post facto law passed by the Legislature? A judicially revived law, in its nature, as in its retrospective practical effects and consequences, is precisely

the same as an ex-post facto law, and therefore, it is unjust, unconstitutional, and voidable. Again, an ex-post facto law, even when enacted by the Legislature, is declared by the Constitution to be unjust, null, and void.

Why then should "judge-revived law," alias ex-post facto law, be *obeyed* by the unsuspecting but DECEIVED citizens of Massachusetts?

An act (like that for which Churchill was indicted) which WAS NOT FORBIDDEN by any existing statute law, SUBSEQUENTLY became, by JUDICIAL LEGISLATION, A CRIME! Who can fail to see the gross injustice of this judicial dictum, its total incompatibility with the fundamental principles of the Constitution? Who does not see, that by adhering to that absurd "judicial rule," LITIGATION is *increased*, nay, DOUBLED by keeping the people *ignorant* of the law, until it shall be, in a single county, at the end of a long and expensive law suit, "*judicially enacted*," "*revived*," and promulgated from the bench by the Court? Will the people of Massachusetts tolerate a system so obviously unjust and tyrannical? Away with such subversive and anti-American doctrine! Such a theory does not recognise either the Constitution, nor the intelligent source of ALL power — the people; and it is repugnant to all just and enlightened conceptions of a *constitutionally defined* and *limited* government. Therefore, assuming and believing that our position and our doctrine are right and sound, we do not hesitate to say, that the money which has been judicially extorted from those who have been indicted under such a "judicially revived law," *is as clearly unauthorized* by the Constitution, as the "judicial murder of Charles the First and the Earl of Strafford was" in *violation* of the laws of England, or "the imposition of Ship Money, by the King, without the consent of Parliament." Is the despotism of the Star Chamber

Court, in *any degree*, to be revived and tolerated in Massachusetts? if so, let the people know it. No one will deny but what the people had a perfect right through their representatives, to repeal ALL laws which prohibited the sale of liquor. This they did in 1840, and in that year, the people in the exercise of their sovereign power, *directed* the removal from the Statute Book, ALL laws which prohibited the sale of those articles that EVERY citizen *then had*, and *now* possesses the right to buy, and which every man and woman *necessarily* needs, and does consume more or less of, as circumstances and their own unquestionable judgment may seem to require. At that time there was no other "*policy*" for the Legislature to adopt. It had, *previous* to that time, tried "*regulation*," and "stringent *prohibition*." NEITHER proved satisfactory, and in 1840, the Legislature, as the agents of the people, carried out the will of its constituents by repealing the only law on the subject, "determined, as a temperance man declared in the House, to rely on the moral sense and power of the people, for the promotion of practical temperance in drinks, as well as in all other personal matters." Now, by what process, by what authority, and by *whom* has the solemn, deliberate, and *recorded will* of the people, as expressed by the Legislature in 1840, been nullified and expunged from the record, or set at defiance? By the ONLY department of this government which CAN, by usurping the powers which *belong* to the OTHER departments, oppress and set at defiance the clearly expressed and recorded will of the people; and has it not already been done? The Court say that the "*intention of the Legislature*" can be known only but by the "will of the aggregate body, as expressed in the statutes which are enacted." Does not the statute passed in February, 1840, express the "will of the aggregate body," and clearly indicate the "intention of the Legislature,"

that there should be *no law* against the sale? Again, and in other words; the Legislature REFUSED, in its wisdom, to keep a law on the Statute Book, prohibiting the sale of that which EVERYBODY WANTED! This is a fact that speaks volumes. That it is so, is a subject of sincere regret to no one more than to ourself, although it is nevertheless, too true to be denied. In this *fact*, and the constitutional rights of property, and the prerogative which belongs to every individual, lies the insurmountable difficulty which has thus far, and as we apprehend, will continue to prevent the consummation of a great and highly desirable object, *by penal laws*. Such means, under a constitutional government like our own, are not, as experience has *already shown*, neither can they be, made *efficiently applicable* and *adapted* to the end desired. This displeased the spirit of ultraism and misguided zeal. It took from the unsafe hands of a few the *power* to incommode and *dictate* to the many. It placed *them* in the same relation in which every one stands to every other citizen — POWERLESS, except by *precept* and *example!* The Court, however, in "the plentitude of power usurped," have attempted to carry forward a reform in the domestic habits and sacred rights of the people, as we think, without law or authority, and have suffered its sympathy for the *disappointed leaders* in that mistaken and injudicious policy, or in obedience to the "principle of judicial lust for power," to become *more* than a match for the "respect and duty" which it owes to the people and the paramount law of the State, and the dignity and INDEPENDENCE which ought always to characterize the Supreme Judicial Tribunal of a free and enlightened people. Under these views, and there may be others in relation to which we will NOT NOW allude, the Court, with no other authority than an exploded and repudiated principle of judicial construction, have *revived* and *enforced* a REPEALED law

which experience had proved to be unwise, inexpedient, and positively injurious to a GOOD, and in ALL other respects, a popular cause. To enforce such a law, even BEFORE it was repealed by the Legislature, was attended with many and serious difficulties. It was found to be a practical incumbrance to the certain, prompt, and pure administration of public justice. Here then, is additional proof which goes to sustain the *fact* that the law "revived by the Court" is NOT clothed with the "full power and authority of the Constitution," the Legislature having *repealed* it in 1838, and REFUSED to revive it in 1840.

Thus we see at a single glance, the means that have been used to circumvent the legislation of the State, and the modus operandi by which the *will* and the *judgment* of the people, as expressed by the Legislature in the statutes which it has passed, have been disregarded and set at nought by unauthorized judicial power, which is nowhere conferred, but expressly forbidden by the most explicit provisions of the Constitution. Such a course of proceeding, under no other authority than an ancient and ABSURD principle of former judicial despotism, ought to alarm the people of this State, because it cannot but be regarded, by a people jealous of their constitutional liberty, as extremely oppressive and dangerous to, if not ultimately *positively* destructive of, ALL *constitutional security.* In the language of Mr. Jefferson, in his Notes on Virginia, we say, "that we did not fight for an elective nor a *judicial despotism*, but for one in which the powers of government should be so divided and balanced among several bodies, as that no *one* of them could transcend their legal *constitutional limits.*"

Have not our Supreme Court transcended the limits prescribed by the Constitution? Has it not trenched on and occupied ground specially assigned to the executive and

legislative departments, by *reviving repealed* laws? If a case should arise, *growing out of the exercise* of a *constitutional right of property, liberty, or life,* for which there is *no* existing statute law, are the Court to enact a new law, or revive a dead one, and apply it to the case? No one will presume to maintain that it is, or that it *can* be, under our Constitution, a function belonging to the judiciary to revive a repealed or to enact a new statute. To do *either* of these things, requires the exercise of the *same* powers, and *none* of those powers reside with the Court.

We cannot refrain from quoting here the language of Lord Chatham, delivered in the House of Lords, in answer to Lord Mansfield, who claimed for the judiciary, powers above and independent of the Statute Book and the Bill of Rights. It will be found as applicable to the question now under consideration, as it was to a question involving the same general principles at the time it was delivered, in 1770.

Lord Chatham says: — "We have Magna Charta, we have the Statute Book, and the Bill of Rights. If a case should arise unknown to these great authorities, we have still that plain English reason left which is the *foundation* of all our English jurisprudence. It tells us also, that *no court of judicature* can have a power *inconsistent* with, or *paramount* to, the KNOWN LAWS OF THE LAND; that the people, when they choose their representatives, never mean to convey to them a power of invading the rights or trampling upon the liberties of those whom they represent. What security would they have for their rights if once they admitted that a court of judicature might determine every question that came before it, not by any KNOWN POSITIVE LAW, but by the vague, indeterminate, arbitrary rule of what the noble lord is pleased to call — the wisdom of the Court? [alias judge-*made* or judge-*revived* laws.] I still consider them (the judges)

not as law, but as an evidence of '*the law;*' and *before* they can arrive even at that degree of authority, it must appear that they are founded in, and confirmed by reason; that they do not CONTRADICT ANY *existing positive* LAW; that they do not *violate* the SPIRIT or the LETTER of the CONSTITUTION." [The common law (nor any of its principles or maxims) does not authorize the Court to disregard either the statute law or the Constitution.]

"We all know what the Constitution is. We all know that the first principle of it is, that the subject [citizen] shall not be governed by the *arbitrium* of any man, or body of men, but by CERTAIN EXISTING LAWS, to which he has virtually given his consent, which are *open to him to examine*, and not beyond his ability to understand."

These are the sentiments of Chatham, the friend and defender of Boston, and of Massachusetts, against the arbitrary power of the British Parliament and the overbearing and oppressive judiciary of England.

We have a Constitution and a Bill of Rights; are they not binding on and paramount to the Supreme Court? One of the brightest and most noble features of our Constitution is, that it carefully provides for and secures the same rights, privileges, and immunities to the meanest, the poor and the ignorant, as it does to the greatest, the rich and the learned citizen. Now, is there any good reason, or is the Court authorized to change and radically alter that equal and established condition and relation to the government of the rich and the poor, by *reviving* a dead law? The law, as it once stood on the Statute Book, did practically produce that effect; but the Legislature, in its wisdom, summarily removed it from the Statute Book; and where is the authority *but in the legislature*, which can revive, and enforce *that* law again upon the people, thereby practically establishing that offensive dis-

tinction of rights, between the rich and the poor, which the Constitution carefully and emphatically forbids?

Here again we come to the only conclusion which, as we maintain, the Constitution recognizes and fully sustains, viz. that there is not (nor, since February, 1840, has there been) ANY law in this State, clothed with the "full power and authority" of the Constitution, which can or ought to be regarded as binding on the citizen, and which imposes a penalty for selling ardent spirits without a license.

We go further, and say, that the legitimate deduction from this position is, that the money which has been extorted from "a few individuals," under what is IN FACT, judge-made or judge-revived law, has been unjustly and illegally exacted. Are not the *jurors*, alias the *country*, the judges of the *law*, as well as the fact? Who can pronounce his neighbor *guilty*, under *judge-made law?*

Whether it is moral or immoral to sell or use spirituous liquors — whether their use be beneficial or injurious — whether, if they were abolished or "annihilated," a *substitute* for them could be found which would cure the many ills that human nature is heir to — whether the prevalent practice of signing the "teetotal pledge," and the almost universal violation of it oftener than the sun rises and sets, *diminishes* the consumption, and lessens the number of places where it is undisguisedly sold with impunity, in defiance of judge-made or "judge-revived" law — whether it is feasible or even *possible* to abolish or prevent the *sale* or the *use* of spirits, *or any other commodity* which EVERY ONE *wants* and has a perfect "right to buy," by penal laws — whether it comes within the legal and legitimate "limits" of the government, either *directly* or INDIRECTLY, to prohibit and forbid the citizens of the State the "RIGHT TO BUY" that which they possess the means

and the desire to have — or, whether it is expedient, in promoting any moral or religious cause whatever, to legalize a system of arbitrary legal coercion and espoinage, in relation to the unquestionable *reserved rights* and private affairs of individuals and families, which will necessarily lead to universal *practical hypocrisy*, — are questions which are not involved directly, although they may be incidentally, in the subject which we have endeavored to discuss and present for the consideration of every free citizen in the State.

That the 47th chap. of the Revised Statutes, *as it stands on the Statute Book*, has been adjudicated by the S. C. of the United States, as not repugnant to the Constitution and laws of the United States, we admit. But, had the RECORD on which the Court passed, *contained* "*the* FACT" that Thurlow applied for and was REFUSED a license under that chapter, which "FACT" would have sustained Mr. Webster in his argument that it *was, in point of fact*, a law of "PROHIBITION, and consequently repugnant to etc., and *void*," there is not a shadow of doubt, nay the opinions of the Court establish the doctrine that would have decided this chapter to be "unconstitutional and void." In the absence of that "fact," there was nothing on the *record* before the Court which went to sustain the main point in Mr. Webster's argument, and at the same time prove that by the "FRAUDULENT ADMINISTRATION of that law," it was made not only a law of "PROHIBITION," which would have rendered it void, but an open *violation* of the "*intention*" of the Legislature, "the will of the aggregate body" that passed it; as the administration and "judicial construction" of it, during the six years succeeding its enactment, fully prove. Be this, however, as it may, the 2d and 3d sections of the 47th chap. of the Revised Statutes, were REPEALED, "ANNIHILATED" by the Legislature, in 1838, and to this day have never been

revived by the *Legislature*, which is the only competent authority known by the Constitution; *therefore*, all indictments under those sections, are, in our judgment, clearly illegal.

Let us look at this subject through another medium, and recognize a great principle which the experience of the world acknowledges and maintains, as indispensably necessary for the maintainance of government and the rights of the people, and for the peace, prosperity, and happiness of individuals, families, and society at large. We have already alluded to the necessity and the justice of respecting, *at all times and under all circumstances*, the great and SACRED RIGHT OF PROPERTY. The right of property, guarded as it is by the Constitution, constitutes the great "*motive power*" which moves and carries forward all the public and private enterprises of the country, and we may say of the world. Without SECURITY for this *right*, no government, especially one which is founded on the intelligence and "will of the people," can stand and subserve the general purposes for which it was established. No enlightened people ever have, and no people ever ought, to support or tolerate a government which does not steadily, uniformly and practically, recognize and SECURE that great and sacred right TO ALL.

This right is as valuable and as necessary to the *poor* man as it is to the *rich* man. That system or *policy* then, which makes (theoretically or practically, whether it results from state, judicial, or municipal policy) a DISTINCTION between the rich and the less fortunate, is oppressive, dangerous, and generally sows the seeds of its own dissolution. Have not the judiciary, by the assumption and exercise of power, nowhere conferred, imposed on the people that unjust and *intolerable* distinction? The Legislature have NOT; who, then, has done it?

Again, we say, in the language of the late learned, *liberal*, and lamented Judge Story, that "The sacred rights of property are to be guarded at every point. I call them *sacred* because, if they are not invariably respected, or if they are unprotected, ALL other rights become worthless, or visionary. What is personal liberty, if it does not draw after it the right to enjoy the fruits of our own industry? What is political liberty, if it imparts only perpetual poverty to us and all our posterity? What is the privilege of a vote, if the majority of the hour may sweep away the earnings of our whole lives, to gratify the rapacity of the indolent, the cunning, the profligate, or the hypocrite who may be borne into power upon the tide of a temporary popularity? What remains to nourish a spirit of independence, or a love of country, if the very soil on which we tread is ours only at the beck of the village tyrant, or subject to the wild theories of fanaticism and hypocrisy, under the cloak of philanthropy?"

These are the sentiments of one who was deservedly exalted in office, and also in sentiment, who regarded the *Constitution* as his official guide, *rather* than *any* "irresponsible" association of men, however popular they or their cause might for the moment be.

As a further illustration of the importance of studiously respecting the "rights of property," by the Legislature as well as by the judicial departments of our government, let it be remembered that one of the PRINCIPAL ACTIVE ELEMENTS which led to the great, the glorious, and permanently beneficial revolution in 1688, was the IRRESISTIBLE DEMAND, by the *rich* and also by the POOR, for the *better* and *more* CERTAIN "SECURITY of property," against the assumed prerogative of the king, and the arbitrary power of a corrupt and subservient judiciary.

In establishing that security, so indispensably necessary was it regarded, that among other things that were done, the line of succession to the British throne was changed from the Stuarts to the House of Hanover. Hampden might have paid the paltry tax of twenty shillings ship money, our own fathers could have paid the petty tax on tea; but, what *security* would they have had for the remainder of their property, and their subsequent earnings? Not one particle. *Where*, then, is OUR security for that great right?

By our CONSTITUTION, that security is guarantied, and placed beyond the *power* of the judiciary; and even the Legislature *cannot* take individual property, except "the public exigencies" require it to be "APPROPRIATED" to "public uses," and then a "reasonable compensation" shall be paid "therefor." The law of 1838 was a violation of that constitutional "right of property." It was also a violation of the revenue laws of the U. S., by prohibiting the sale of some articles which are authorized to be imported and sold by the laws of Congress. The spirit of that law, however, although the *law* itself was repealed in 1840, has been "revived by judicial construction," in violation of the express legislation of the State and the guaranties of the Constitution.

Again, what is the constitutional *right* of "*acquiring* and *possessing* property" worth, when the right to *transfer* that property is denied? To "possess" and "enjoy property," necessarily implies the right to *transfer* as well as to *acquire* it. What is silver or gold worth if the possessor be not allowed to transfer it? What is the unassailed and *unassailable right* to "acquire" and "*buy*" property worth, without the correlative right in *others* to *sell*? Will any intelligent man, on this or the other side of the Atlantic Ocean, advocate the expediency or the propriety of *attempting* to *prohibit* the right to *buy* or the right to *consume* ardent spirits?

Let it be remembered, that it is *not* the *few* who sell, but the thousands upon thousands who CONSUME, who CANNOT be controlled by legislative, nor judicial penal laws. If there were no CONSUMERS, could any be sold? Why then vainly attempt by dangerous and illegal means, to prevent the sale while the right and the disposition to *buy* and consume is as free (and almost as universally indulged in) as the air we breathe? Do the judges of our Courts, the prosecuting attorneys, the grand and traverse jurors, the witnesses, and the complainants, ABSTAIN from the *purchase* and *use* of those articles which are not *allowed* "by judge law" to be sold without a license? Do they not ALL "contribute" their full share to swell that "POWER OF CONSUMPTION," which has and ever will render vain and impotent, ALL penal laws against the sale? The great and RADICAL mistake which was originally made, and is *still persisted* in, lies in the FACT, that a proper DISTINCTION between the USE WITHOUT ABUSE, and mere *professional* TEETOTALISM, has not been made or allowed, by the injudicious and shortsighted leaders in a good and noble reform, which, when accomplished, will amount to this, and this *only*, viz.: "use ALL things only when they are required, and ABUSE NONE."

This is the only *attainable* rule which can be made *universal in its application*, and *permanently* beneficial to individuals, and to the community at large. Without any vain and useless prohibitory legislation, or dangerous and arbitrary assumptions of power by the judiciary, this great and philanthropic object may be pursued and *attained* by a concentrated and UNITED PUBLIC SENTIMENT, which is the ONLY reliable guaranty for the success and ultimate *triumph* of a great *revolution* in the morals and habits of a free and enlightened people.

The right to worship God according to the dictates of our

own conscience, is secured to every citizen. The rich and the poor — the learned and the unlearned, are alike protected in the exercise of this right by the constitution; and the legislature have neither the right nor the power, by direct or indirect legislation, to interfere with or change this equal and just condition of religious right. The right to "acquire" and enjoy our property, stands on the same broad ground, and is secured to the poor and the ignorant, as well as to the rich and the learned, by the same paramount law of the State. The constitution has very wisely and distinctly placed these two rights in perfect security, by not leaving them *subject to the will* and *caprice* of an accidentally liberal or bigoted majority. The constitution controls and limits the power of the *majority*, whereby the rights of the *minority* are supposed and intended to be secured; by no other principle could this important object be permanently secured and established. It is obvious, then, that the *minority* CANNOT be deprived of the great and essential rights of life, liberty, property or religious freedom, by the mere will of the majority, without a violation of the most sacred provisions of the constitution.

Mr. Madison, in the close of the 48th number of the Federalist, in discussing the *necessity* of separating the different departments of government, says, — "The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is *not* a *sufficient guard against* those encroachments which lead to a tyrannical concentration of *all powers* of government in the *same hands.*"

Thus we see, that more than sixty years ago, the far-seeing and sagacious mind of Mr. Madison foresaw and predicted, that INFIDELITY to the constitution, would lead to

a "tyrannical concentration of all powers of government in the same hands," which has already been realized in many instances, by the people of this State, by the usurpation of powers by the Supreme Court. In this, who will undertake to maintain that there is either safety or security for our "natural, essential and inalienable rights," or that there is any substantial, practical enjoyment of *constitutional* liberty or *constitutional* government?

The constitution was intended, and if maintained, will secure to the *minority*, certain "natural, essential, and inalienable rights," by restraining and limiting the power of the *majority* in relation to those rights. Is it not the duty of the Court to sustain that *limitation* of power, and thereby *save the constitutional rights* of the *minority?*

Mr. Justice Story says, — "It matters not how *popular* a statute may be, or how commanding the *majority*, by which it has been enacted; it must stand the test of the CONSTITUTION," (not the dictum of the Court, nor the authority of "*usage and tradition!*") "or it falls."

"The humblest citizen may question its constitutionality."

Here is a manly, clear and *independent* recognition of the spirit and letter of the *constitutional protection* of the *minority* against the *unlimited power* of the majority.

Here, also, we see the absolute necessity of an independent, impartial and unbiased judiciary, that will fearlessly recognize and maintain the constitution AS IT IS, irrespective of parties, whether they are *popular* or otherwise. A judiciary which will not do this, fails of performing the most sacred and important duty which can devolve on it. The plea of "usage and tradition," and "the well-known repositories of" ancient feudal times, can afford no apology or justification for the omission of that high and holy duty.

Now, religious liberty and the rights of *property* are indispensable and sacred, guarantied to ALL by the Constitution; and where is the authority given to the "majority of the legislature" to interfere with or to change the constitutional equality in the exercise of property rights, any more than it can in relation to religious rights? Under the existing state of things, which is attributable in some degree to legislative omission of duty, but far more to judicial legislation, do the rich and poor enjoy the *same* rights and privileges, in relation to their property? The rich "may" sell in quantities that will accommodate the means and the wants of the wealthy, without any restraint of judge or statute law; BUT, the poor man, or even the man of moderate means—of industrious and frugal habits—cannot *sell*, nor *obtain* the same articles, in quantities proportioned to his means and his wants, even for the most urgent and necessary purposes, without subjecting himself or his neighbor to a criminal prosecution, fine, and perhaps imprisonment. Would a discrimination between the rich and the poor, so obviously *arbitrary* and *unjust*, in relation to their religious rights, be tolerated for a single moment? if not, upon what ground, and by what authority can the same discrimination, between the rich and the poor, be made and defended, in relation to the right of transferring, acquiring and enjoying, the common and sacred rights of property?

The constitution nowhere recognizes such a distinction, or inequality of rights, between the rich and the poor. It has, however, been urged with more zeal than sound judgment, "that it ought to have been expressly provided for." Shall this supposed *defect* of the constitution, be remedied, by a violation of its express and most important existing provisions?

Look at the practical effect which is produced, and the un-

just and arbitrary distinction that is made between the rich and the poor, by the fraudulent and partial administration of the present system.

A man may SELL and transfer 28 lbs. or more, as his friend or customer may require; BUT, his neighbor, who has but 10 or 20 lbs. is forbidden under a severe penalty, from selling to *his* friend or customer, any portion or even the 20 lbs.! A man who has the means, and desires the quantity, without any inconvenience to himself, or even the possibility of subjecting the seller to a fine and imprisonment, may BUY 28 lbs. or more; but the man whose means and whose wants require no more than 1 or 5 lbs., or *any* quantity less than 28 lbs., is virtually and practically *denied* the right to buy, however pressing the exigency may be for the article! Is this the "*equality* of *rights*," which was purchased and established by the blood and treasure of '76? Did the people of this State, in 1780, when they adopted the constitution, contemplate establishing this odious distinction in the rights of property, between the rich and the poor? Again. Do not ardent spirits constitute a part of the aggregate property of the State? Are they not entitled to ALL the rights, privileges and immunities, which attach to all other kinds of property? If you buy them, the law makes you pay for them — if you steal them, the criminal law punishes you — they are the product of labor and capital — they are a basis of taxation for the support of government, in common with all other property, and are, upon the clearest and most indisputable principles of moral as well as legal right, entitled to the free and common right of transfer in such quantities as the buyer and the seller may agree upon. Taxation and sale are inseparably connected. The power to tax does not imply the power to deprive the property of any of its rights and privileges. The imposition of a tax, by and

for the support of government, upon the property, implies and carries with it the constitutional guaranty of all the rights and privileges of transfer, as well as the right to use and possess it. But above and beyond all this, which we believe to be of itself incontrovertible, the people have no where surrendered the power to the Legislature, to say how much or how little a man shall or may buy, or how much he may, or may not sell. A people who would confer upon their government the right and the power to interfere with and control these matters, by arbitrary penal laws, would not only cease to be freemen, but would deserve to live under the iron despotisms of ancient baronial governments, with a "Star Chamber Court," to sit in solemn mockery upon their lost rights and self-degraded condition.

But, let us return from this digression to the subject with which we commenced, and look at the POLICY of the Legislature in relation to the promulgation of the doings of the General Court. Is it not intended to give to the people an *opportunity* at least, of knowing what the laws are, and what they require? Every year, all acts which are passed and all modifications of the laws, and such acts as are repealed, are published throughout the State, for the express purpose of giving the people a knowledge of what is required of every citizen. Now, if a repealed law, is to be revived,—if it be the "intention of the Legislature,"—if it be the "will of the aggregate body," to "*revive*" a defunct law, *how* are the people to know WHAT LAW is revived, and *when* it shall take effect, but by the ACT of the Legislature? If done by the Legislature, as the Constitution contemplates it *shall be*, then the act will be promulgated throughout the State, and the people will not be "kept in ignorance of the law." This was undoubtedly one of the objects intended to be secured by the thirtieth article of the Bill of Rights, which prohibits the Judiciary from the exercise of executive

or legislative powers, and goes one step further, and declares that, this shall "be a government of *laws*," and "NOT of *men*."

The ancient and absurd rule, or judicial dictum, that the repeal of a repealing statute revives, by *implication*, a pre-existing but *repealed* statute, NEVER WAS A PROVISION OF LAW; it cannot be found in any ancient or modern statute. It was first adopted, says Hallam, by "obsequious and subservient judges," dependent upon, or, desirous to secure the smiles of an arbitrary and profligate king. Judges, under other and quite differently constructed governments than our own, who have no written organic law, may, perhaps, with some degree of "hereditary" propriety, and without invading the "sacred and reserved" rights of the people, adhere to that absurd rule, or any other equally preposterous, but NOT SO in a government like our own. In this State, the people have, in their original sovereign character, ordained and *established* a permanent law, which *supercedes*, or *abrogates*, "ALL other laws and rules" which are inconsistent, or "contrary" to it. We have instituted, organized and established the constitutional MACHINERY for *enacting*, *repealing*, and the REVIVING of repealed laws.

The Judiciary, (thanks for the wisdom and forecast of our fathers,) constitute NO PART of—neither *can* it constitutionally interfere with, or in any manner control, that machinery, by assuming and performing any of its duties, or exercising any of its functions.

In this connection, we cannot omit alluding to another consideration which, to our mind, further illustrates the impropriety and danger of allowing the Court to exercise legislative powers, in reviving laws by judicial construction. There is no statute in England, nor has there ever been one in this State, making it *obligatory* on the Court, to apply that "rule" in every case of a repeal of a repealing statute.

It will be observed, with some degree of astonishment, we doubt not, that it is entirely OPTIONAL with the Court, to adopt and apply the rule or not. For instance, the Court, under the "rule of construction," MAY! revive a repealed law, which would send a man to the State Prison, for stealing a loaf of bread, or a peck of potatoes, to feed his starving family with; but, the Court is NOT BOUND by any LAW to revive *another* repealed law, to punish another, who may be "clothed in purple and fine linen," but, who has, nevertheless, cheated his neighbor out of his homestead, or his tens of thousands. Is there no danger in this? Is there not a wide margin for partiality, prejudice, and corruption? Are judges supposed to be free from the imperfections that man is heir to? Where, *when*, and by *whom* was this carte-blanche authority given to the judges of our Supreme Court? Since the adoption of the Constitution, has any thing "been discovered" in the nature, education, moral, religious or political character of the people of this Commonwealth, which requires, or which can justify a practical disregard of the constitutional restrictions and limitations of power, or demand the tacit recognition of a "judicial despotism," with powers limited and controlled *only* by the prejudices, predilections, or the fluctuating, and oftentimes senseless "DISCRETION" of the judges.

If the people have, in fact, so far degenerated in their moral and civil condition as to require such a "star chamber court," to govern and control them in the exercise of their reserved, moral, social, and civil rights, then we say, let the Constitution be so amended as to recognize and establish such a Judiciary—and make it independent of, and in no way or manner responsible to the Constitution, or to the people—let its *power* and its *authority* be drawn from that heterogeneous mass of accumulated rubbish of ancient

times, denominated the "common law," alias, the "DISCRETION" of the Court. Then, *and not till then*, may the Court, with some show of propriety and consistency, repudiate the Constitution, and *respect* and WORSHIP at the altar of "usage and tradition; and the well-known (to whom?) repositories of legal learning!" Then, indeed, the "*practice* of our Courts" will *cease* to be at *variance* with the theory and letter of American liberty, regulated and protected by CONSTITUTIONAL LAWS.

If the "ancient judicial fetters and chains" are supposed to be immoveably fastened upon the people—if the Court is to continue to regard that ancient and absurd rule as paramount to the Constitution, which is a practical subversion of the theory of our government, the "full power and authority of the Legislature" to enact, modify, suspend, repeal, and to REVIVE all "needful laws," and the Constitution and the plain common sense of the people to the contrary nothwithstanding, thereby increasing to an alarming extent, the "glorious uncertainties of the law," and with it, a corresponding increase of litigation, which practically empties the pockets of the people into the coffers of the legal profession,—if these things do exist and are to continue, the inquiry naturally presents itself, *what* and *where* is the remedy, and *how* is it to be applied? That these things do exist, and that it is the legitimate, and to a very considerable extent, the unavoidable result of "judicial legislation," no one, who will look at cause and effect, can doubt.

One remedy is, the enactment of a law by the Legislature, providing that no law, which has been repealed by the Legislature, shall subsequently be revived and enforced by judicial construction. Such a bill has, we believe, heretofore passed the House of Representatives at three successive sessions, by a majority of more than three to one, and as

often it has been lost in the Senate by the influence and the *votes* of the "legal profession." Is it not perfectly obvious, that the "business of the legal profession is vastly increased" by the continuance of this system of judicial legislation, and an enormous expense, delay, uncertainty and embarrassment, thereby occasioned to the people?

The other remedy which we suggest will be more effectual and permanent; but, it will require an amendment of the Constitution, in order to give the election of the judges to the people, which will make the judges directly and immediately *responsible* to the people, for whose benefit the judicial offices have been established.

The first remedy which we have suggested, may be applied by the next Legislature; *provided*, care be taken to send to the Senate those who are not professionally subservient to the Court in its constant struggles for power, its fluctuating and uncertain "*discretion*," which is influenced and controlled by "usage and tradition," and the absurd and exploded "maxims of an ancient system of jurisprudence" *more* than it is by the Constitution and laws, made in pursuance of it, which have grown up with and are perfectly adapted to our own American system of government. We say, let those be sent to the Senate whose interests are *not* to be promoted, and who have no "professional pride to gratify," by *increasing litigation*, through the instrumentality of judicial legislation.

The people have, inconsiderately and unintentionally, perhaps, encouraged judicial disregard of the Constitution, by manifesting a RESTLESS DESIRE OF GOVERNING TOO MUCH. This, however, constitutes *no excuse* for the Court. Where the people, by their laws, *lead*, it is the province and the duty of the Court to *follow*.

Whenever the Legislature, through inadvertence, or by

reckless indulgence, *in attempting to govern too much*, or a disregard of the constitutional limits of power, and the sacred and reserved rights of the people, which are NOT within the scope or power of a mere *majority* of the Legislature, should pass a law transcending those limits, and thereby invading any of those reserved rights, is it not one of the highest and most important functions of the Judiciary to interpose its constitutional authority, and stay the operation of an unconstitutional statute, and thereby *save* the rights of the people, and vindicate the integrity of the Constitution? Why was a life tenure given to the judges? For no other but the obvious reason that, it was necessary to make and place them in their office, INDEPENDENT of the fluctuating, political, moral, or sectarian *majority* which might occasionally be found in the Legislature, inclined to *excessive* legislation.

Public wisdom, or the legislative wisdom of the State, ought to know, or *endeavor* to know, the different departments of THINGS, so as to separate those which belong to *public laws* to regulate, from those which properly belong to and must necessarily be controlled ONLY by the manners, the morals, and the religious principles of the people.

Tyranny, or an arbitrary *distinction* in the civil and domestic rights of the rich and the poor, by the hand of authority, make men *justly wish* for the *downfall* of such abused powers. No government ever becomes unpopular by any other direct cause, than its *own weakness*, which is generally occasioned by INTERMEDDLING with the private affairs and the morals of the people, or by overstepping the legislative limits.

History and observation long ago confirmed us in our unalterable opposition to an overdoing of any sort of legislation, and, more especially against the most *dangerous* of

ALL, the meddling with the subsistence, the morals, or the religion of the people. In relation to these matters, the hand of authority ought never to be seen or felt. A people so ignorant and degraded as to require or tolerate the controlling interposition of the hand of civil rule in these *essentially* private and reserved rights, would prove themselves destitute of political merit and public and private virtues.

In relation to our reserved, private, social, domestic, moral, and religious rights, the hand of authority cannot, with *propriety* and *safety*, *interfere*. In relation to these matters, the legislature *may*, POSSIBLY, give a color or a leaning, — it CANNOT GIVE A CONTROLLING LAW. In attempting it, what will be the result? Have we not already realized that which is disgraceful, and, consequently, worse than a failure? If it continues to persist in attempting to prohibit individual private vices by *general laws* — in other words, of *governing too much* — it will descend from the affairs of the state, where it ought to stop, to the county — to the town — the district — the parish — to the private house — to individuals of the same family, with an accelerated speed, until, what begun in odious restlessness and unauthorized power, will have ended in contemptible imbecility and officious disappointment, and general, if not universal confusion of public and private matters. Thus opening a wide and dangerous door, exhibiting to the world a disgraceful jumble and entanglement of private and public matters, thereby inviting and encouraging the judiciary in assuming unlimited legislative power, in construing the laws, and in the administration of public justice. All history teaches, and impressively inculcates the lesson, that the downfall of governments have been occasioned by attempting to *govern too much*. Shall we not profit by our own experience and good sense, and the admonitions of the past history of the world?

To the cause of practical temperance we have always been friendly, and are still inclined to contribute in promoting its success, by precept and example, and in the use of all other additional means which are calculated to ABOLISH from among us the debasing sin of drunkenness. But, in the selection of the means by which *this* object is to be accomplished, it cannot be forgotten that there are other objects of care and attention, and other considerations, which cannot be omitted without the neglect of a paramount duty. Therefore we cannot, consistently with what we believe every citizen FIRST owes to the cause of civil CONSTITUTIONAL government, with its conservative and perpetuating principles; with its checks and limitations of power, which are imposed on the different departments of government by the constitution — we cannot concur in, or justify the use of those means for the promotion of a *single* SOLITARY *virtue*, which will, if once admitted, not only radically change the theory and the fundamental principles of our government, but will *deprive* the people of ALL CONSTITUTIONAL *protection*, and expose them and their "inalienable rights" to the temporary popular will of an irresponsible *majority*, or to the tender mercies of a judiciary, with unrestrained and unlimited powers.

It is on this ground, where the radical friends and advocates of *teetotalism* on the one side, and the conservative and sincere friends of "temperance *in all things* and the abuse of none" on the other side, stand before the world, DIVIDED — in sentiment and in action. The consequence is an obvious retrograde movement, in the views and habits of the public upon the subject, or in relation to the proper means to be used for the promotion of a sound, enduring, temperance principle and practice throughout the whole community. Now, which of the two parties have a

right to say to the other, "You are an enemy to the cause of temperance, BECAUSE *you* will not subscribe to our standard, or to *our* doctrine of TEETOTALISM," and *justify* the use of ALL means for its accomplishment?

The answer to this is clearly implied in the FACT, which experience has *demonstrated*, that "*teetotalism*" is NOT ATTAINABLE, even by the use of *improper* and *illegal* means. The object of the conservative party is not only *attainable*, as experience has already proved, but it is altogether preferable, — from the *fact*, that it inculcates the necessity of *personal discipline*, and the cultivation of other principles and virtues, which not only prevent excess in drink, but saves from many other vicious and improper indulgences.

Can the same be said in relation to "*teetotalism?*" an abstraction! This relies on *prohibition!* and coercion! combined, *against* the will, the judgment, and the individual prerogative of every one; while the other relies on the enlightened and virtuous assent of the mind, leaving the *personal rights*, and the individual responsibility and accountability unassailed, by government, the judiciary, or a mistaken and false philanthropy.

One of the consequences of this division of sentiment, which we hope and trust will be realized, will be, a clearer and more certain *knowledge of our rights* and the *tenure* by which we hold them, and a higher appreciation of the value and importance, by the people, of maintaining the checks and balances — the division, restrictions, and limitations of power, which are established by the constitution. The maintenance of these principles constitutes the *only security* that can be relied on, for the enjoyment of EQUAL RIGHTS and *privileges*, by the rich and the poor. Whether they shall be regarded and sustained, or, disregarded by the

government, takes hold of and will affect the religious and moral condition, and the ultimate political destiny of coming generations.

In conclusion, we desire to put a plain, and, as we believe, a very important question, for the consideration of every citizen of this Commonwealth, without regard for or relation to party arrangements, prejudices, or predilections, in reference to the use or the sale of spirituous liquors. We regard it as a question of vital importance, — comprehending, as it does, not only the CONSTITUTIONAL security of the great and indispensable rights of property and civil liberty to the present, but also to coming generations. Collateral and subordinate moral and religious questions have heretofore, and probably always will, divide public sentiment. They, however, sink into utter insignificance, when compared with the importance of maintaining and upholding the *integrity* and the supremacy of our *constitutional* government in its original character — beauty, harmony, and purity. Is it not our duty, and is it not our glorious privilege, to *preserve* the inestimable legacy of our predecessors, that it may be received from our hands by our successors, to whom it rightfully belongs, unimpaired in any of its vital and important provisions and principles? The question, then, which we submit to the people, for their serious consideration, is this — "Shall the *integrity* and the *authority* of the CONSTITUTION be maintained, RESPECTED and OBEYED by the JUDICIAL, as well as by the other departments of the government?"

In the language of a celebrated English writer, some eighty years ago, in an address to the English nation, in relation to the "usurpations of power" by the judiciary of England, we say to the people of this Commonwealth, that, "When you leave the unimpaired hereditary freehold to

your children, you do but HALF your duty. Both PROPERTY and LIBERTY are precarious, unless the possessors have *sense* and *spirit* enough to defend them. Be ASSURED that the LAWS which protect us in our civil rights grow out of the CONSTITUTION, and they must FALL or FLOURISH with it."

JUNIUS.

NOTE.

We have said, that "resistance to power usurped" was a duty which every citizen owes to the cause of *constitutional* government. We do not mean physical resistance, in the shape of mob or Lynch-law, but the *resistance* of the BALLOT BOX. It is THERE, that either or all the departments of government may be admonished, and even rebuked, if need be — it is *there*, that the people are to vindicate and uphold the supremacy of their own organic law — it is *there*, that the rights which are secured to all by that law are to be defended, whenever they are assailed or disregarded by the hand of power — it is *there* that all assumptions of power are to be denounced and condemned — it is *there*, that *all attempts*, by legislative or judicial power, to draw a horizontal dividing line between the rich and the poor, in relation to their personal, domestic, and social rights, is to be indignantly frowned upon — it is *there*, that the enjoyment of a *common* EQUALITY of *rights*, *privileges*, and *immunities*, according to our circumstances, is to be defended and maintained — it is *there*, that the cause of

civil liberty and equal rights, as established by the constitution, is to be defended and perpetuated — and it is *there*, *also*, that the hand of officious authority is to be restrained from intermeddling with, *or repelled from*, an arbitrary intrusion into our private, domestic, social, and moral rights.

J.

(Nov., 1891, 20,000)

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